

SHB 2215 - S COMM AMD

By Committee on Highways & Transportation

ADOPTED 04/16/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 46.70.180 and 2001 c 272 s 10 and 2001 c 64 s 9 are  
4 each reenacted and amended to read as follows:

5 Each of the following acts or practices is unlawful:

6 (1) To cause or permit to be advertised, printed, displayed,  
7 published, distributed, broadcasted, televised, or disseminated in any  
8 manner whatsoever, any statement or representation with regard to the  
9 sale, lease, or financing of a vehicle which is false, deceptive, or  
10 misleading, including but not limited to the following:

11 (a) That no down payment is required in connection with the sale of  
12 a vehicle when a down payment is in fact required, or that a vehicle  
13 may be purchased for a smaller down payment than is actually required;

14 (b) That a certain percentage of the sale price of a vehicle may be  
15 financed when such financing is not offered in a single document  
16 evidencing the entire security transaction;

17 (c) That a certain percentage is the amount of the service charge  
18 to be charged for financing, without stating whether this percentage  
19 charge is a monthly amount or an amount to be charged per year;

20 (d) That a new vehicle will be sold for a certain amount above or  
21 below cost without computing cost as the exact amount of the factory  
22 invoice on the specific vehicle to be sold;

23 (e) That a vehicle will be sold upon a monthly payment of a certain  
24 amount, without including in the statement the number of payments of  
25 that same amount which are required to liquidate the unpaid purchase  
26 price.

27 (2)(a) To incorporate within the terms of any purchase and sale or  
28 lease agreement any statement or representation with regard to the  
29 sale, lease, or financing of a vehicle which is false, deceptive, or  
30 misleading, including but not limited to terms that include as an added

1 cost to the selling price or capitalized cost of a vehicle an amount  
2 for licensing or transfer of title of that vehicle which is not  
3 actually due to the state, unless such amount has in fact been paid by  
4 the dealer prior to such sale. However, an amount not to exceed  
5 thirty-five dollars per vehicle sale or lease may be charged by a  
6 dealer to recover administrative costs for collecting motor vehicle  
7 excise taxes, licensing and registration fees and other agency fees,  
8 verifying and clearing titles, transferring titles, perfecting,  
9 releasing, or satisfying liens or other security interests, and other  
10 administrative and documentary services rendered by a dealer in  
11 connection with the sale or lease of a vehicle and in carrying out the  
12 requirements of this chapter or any other provisions of state law.

13 (b) A dealer may charge the documentary service fee in (a) of this  
14 subsection under the following conditions:

15 (i) The documentary service fee is disclosed in writing to a  
16 prospective purchaser or lessee before the execution of a purchase and  
17 sale or lease agreement;

18 (ii) The documentary service fee is not represented to the  
19 purchaser or lessee as a fee or charge required by the state to be paid  
20 by either the dealer or prospective purchaser or lessee;

21 (iii) The documentary service fee is separately designated from the  
22 selling price or capitalized cost of the vehicle and from any other  
23 taxes, fees, or charges; and

24 (iv) Dealers disclose in any advertisement that a documentary  
25 service fee in an amount up to thirty-five dollars may be added to the  
26 sale price or the capitalized cost.

27 For the purposes of this subsection (2), the term "documentary  
28 service fee" means the optional amount charged by a dealer to provide  
29 the services specified in (a) of this subsection.

30 (3) To set up, promote, or aid in the promotion of a plan by which  
31 vehicles are to be sold or leased to a person for a consideration and  
32 upon further consideration that the purchaser or lessee agrees to  
33 secure one or more persons to participate in the plan by respectively  
34 making a similar purchase and in turn agreeing to secure one or more  
35 persons likewise to join in said plan, each purchaser or lessee being  
36 given the right to secure money, credits, goods, or something of value,  
37 depending upon the number of persons joining the plan.

1 (4) To commit, allow, or ratify any act of "bushing" which is  
2 defined as follows: Taking from a prospective buyer or lessee of a  
3 vehicle a written order or offer to purchase or lease, or a contract  
4 document signed by the buyer or lessee, which:

5 (a) Is subject to the dealer's, or his or her authorized  
6 representative's future acceptance, and the dealer fails or refuses  
7 within three calendar days, exclusive of Saturday, Sunday, or legal  
8 holiday, and prior to any further negotiations with said buyer or  
9 lessee, either (i) to deliver to the buyer or lessee the dealer's  
10 signed acceptance, or (ii) to void the order, offer, or contract  
11 document and tender the return of any initial payment or security made  
12 or given by the buyer or lessee, including but not limited to money,  
13 check, promissory note, vehicle keys, a trade-in, or certificate of  
14 title to a trade-in; or

15 (b) Permits the dealer to renegotiate a dollar amount specified as  
16 trade-in allowance on a vehicle delivered or to be delivered by the  
17 buyer or lessee as part of the purchase price or lease, for any reason  
18 except:

19 (i) Failure to disclose that the vehicle's certificate of ownership  
20 has been branded for any reason, including, but not limited to, status  
21 as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

22 (ii) Substantial physical damage or latent mechanical defect  
23 occurring before the dealer took possession of the vehicle and which  
24 could not have been reasonably discoverable at the time of the taking  
25 of the order, offer, or contract; or

26 (iii) Excessive additional miles or a discrepancy in the mileage.  
27 "Excessive additional miles" means the addition of five hundred miles  
28 or more, as reflected on the vehicle's odometer, between the time the  
29 vehicle was first valued by the dealer for purposes of determining its  
30 trade-in value and the time of actual delivery of the vehicle to the  
31 dealer. "A discrepancy in the mileage" means (A) a discrepancy between  
32 the mileage reflected on the vehicle's odometer and the stated mileage  
33 on the signed odometer statement; or (B) a discrepancy between the  
34 mileage stated on the signed odometer statement and the actual mileage  
35 on the vehicle; or

36 (c) Fails to comply with the obligation of any written warranty or

1 guarantee given by the dealer requiring the furnishing of services or  
2 repairs within a reasonable time.

3 (5) To commit any offense relating to odometers, as such offenses  
4 are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A  
5 violation of this subsection is a class C felony punishable under  
6 chapter 9A.20 RCW.

7 (6) For any vehicle dealer or vehicle salesperson to refuse to  
8 furnish, upon request of a prospective purchaser or lessee, for  
9 vehicles previously registered to a business or governmental entity,  
10 the name and address of the business or governmental entity.

11 (7) To commit any other offense under RCW 46.37.423, 46.37.424, or  
12 46.37.425.

13 (8) To commit any offense relating to a dealer's temporary license  
14 permit, including but not limited to failure to properly complete each  
15 such permit, or the issuance of more than one such permit on any one  
16 vehicle. However, a dealer may issue a second temporary permit on a  
17 vehicle if the following conditions are met:

18 (a) The lienholder fails to deliver the vehicle title to the dealer  
19 within the required time period;

20 (b) The dealer has satisfied the lien; and

21 (c) The dealer has proof that payment of the lien was made within  
22 two calendar days, exclusive of Saturday, Sunday, or a legal holiday,  
23 after the sales contract has been executed by all parties and all  
24 conditions and contingencies in the sales contract have been met or  
25 otherwise satisfied.

26 (9) For a dealer, salesperson, or mobile home manufacturer, having  
27 taken an instrument or cash "on deposit" from a purchaser or lessee  
28 prior to the delivery of the bargained-for vehicle, to commingle the  
29 "on deposit" funds with assets of the dealer, salesperson, or mobile  
30 home manufacturer instead of holding the "on deposit" funds as trustee  
31 in a separate trust account until the purchaser or lessee has taken  
32 delivery of the bargained-for vehicle. Delivery of a manufactured home  
33 shall be deemed to occur in accordance with RCW 46.70.135(5). Failure,  
34 immediately upon receipt, to endorse "on deposit" instruments to such  
35 a trust account, or to set aside "on deposit" cash for deposit in such  
36 trust account, and failure to deposit such instruments or cash in such  
37 trust account by the close of banking hours on the day following

1 receipt thereof, shall be evidence of intent to commit this unlawful  
2 practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a  
3 separate trust account which equals his or her customary total customer  
4 deposits for vehicles for future delivery. For purposes of this  
5 section, "on deposit" funds received from a purchaser of a manufactured  
6 home means those funds that a seller requires a purchaser to advance  
7 before ordering the manufactured home, but does not include any loan  
8 proceeds or moneys that might have been paid on an installment  
9 contract.

10 (10) For a dealer or manufacturer to fail to comply with the  
11 obligations of any written warranty or guarantee given by the dealer or  
12 manufacturer requiring the furnishing of goods and services or repairs  
13 within a reasonable period of time, or to fail to furnish to a  
14 purchaser or lessee, all parts which attach to the manufactured unit  
15 including but not limited to the undercarriage, and all items specified  
16 in the terms of a sales or lease agreement signed by the seller and  
17 buyer or lessee.

18 (11) For a vehicle dealer to pay to or receive from any person,  
19 firm, partnership, association, or corporation acting, either directly  
20 or through a subsidiary, as a buyer's agent for consumers, any  
21 compensation, fee, purchase moneys or funds that have been deposited  
22 into or withdrawn out of any account controlled or used by any buyer's  
23 agent, gratuity, or reward in connection with the purchase, sale, or  
24 lease of a new motor vehicle.

25 (12) For a buyer's agent, acting directly or through a subsidiary,  
26 to pay to or to receive from any motor vehicle dealer any compensation,  
27 fee, gratuity, or reward in connection with the purchase, sale, or  
28 lease of a new motor vehicle. In addition, it is unlawful for any  
29 buyer's agent to engage in any of the following acts on behalf of or in  
30 the name of the consumer:

31 (a) Receiving or paying any purchase moneys or funds into or out of  
32 any account controlled or used by any buyer's agent;

33 (b) Signing any vehicle purchase orders, sales contracts, leases,  
34 odometer statements, or title documents, or having the name of the  
35 buyer's agent appear on the vehicle purchase order, sales contract,  
36 lease, or title; or

1 (c) Signing any other documentation relating to the purchase, sale,  
2 lease, or transfer of any new motor vehicle.

3 It is unlawful for a buyer's agent to use a power of attorney  
4 obtained from the consumer to accomplish or effect the purchase, sale,  
5 lease, or transfer of ownership documents of any new motor vehicle by  
6 any means which would otherwise be prohibited under (a) through (c) of  
7 this subsection. However, the buyer's agent may use a power of  
8 attorney for physical delivery of motor vehicle license plates to the  
9 consumer.

10 Further, it is unlawful for a buyer's agent to engage in any false,  
11 deceptive, or misleading advertising, disseminated in any manner  
12 whatsoever, including but not limited to making any claim or statement  
13 that the buyer's agent offers, obtains, or guarantees the lowest price  
14 on any motor vehicle or words to similar effect.

15 (13) For a buyer's agent to arrange for or to negotiate the  
16 purchase, or both, of a new motor vehicle through an out-of-state  
17 dealer without disclosing in writing to the customer that the new  
18 vehicle would not be subject to chapter 19.118 RCW. This subsection  
19 also applies to leased vehicles. In addition, it is unlawful for any  
20 buyer's agent to fail to have a written agreement with the customer  
21 that: (a) Sets forth the terms of the parties' agreement; (b)  
22 discloses to the customer the total amount of any fees or other  
23 compensation being paid by the customer to the buyer's agent for the  
24 agent's services; and (c) further discloses whether the fee or any  
25 portion of the fee is refundable.

26 (14) Being a manufacturer, other than a motorcycle manufacturer  
27 governed by chapter 46.94 RCW, to:

28 (a) Coerce or attempt to coerce any vehicle dealer to order or  
29 accept delivery of any vehicle or vehicles, parts or accessories, or  
30 any other commodities which have not been voluntarily ordered by the  
31 vehicle dealer: PROVIDED, That recommendation, endorsement,  
32 exposition, persuasion, urging, or argument are not deemed to  
33 constitute coercion;

34 (b) Cancel or fail to renew the franchise or selling agreement of  
35 any vehicle dealer doing business in this state without fairly  
36 compensating the dealer at a fair going business value for his or her  
37 capital investment which shall include but not be limited to tools,

1 equipment, and parts inventory possessed by the dealer on the day he or  
2 she is notified of such cancellation or termination and which are still  
3 within the dealer's possession on the day the cancellation or  
4 termination is effective, if: (i) The capital investment has been  
5 entered into with reasonable and prudent business judgment for the  
6 purpose of fulfilling the franchise; and (ii) the cancellation or  
7 nonrenewal was not done in good faith. Good faith is defined as the  
8 duty of each party to any franchise to act in a fair and equitable  
9 manner towards each other, so as to guarantee one party freedom from  
10 coercion, intimidation, or threats of coercion or intimidation from the  
11 other party: PROVIDED, That recommendation, endorsement, exposition,  
12 persuasion, urging, or argument are not deemed to constitute a lack of  
13 good faith;

14 (c) Encourage, aid, abet, or teach a vehicle dealer to sell or  
15 lease vehicles through any false, deceptive, or misleading sales or  
16 financing practices including but not limited to those practices  
17 declared unlawful in this section;

18 (d) Coerce or attempt to coerce a vehicle dealer to engage in any  
19 practice forbidden in this section by either threats of actual  
20 cancellation or failure to renew the dealer's franchise agreement;

21 (e) Refuse to deliver any vehicle publicly advertised for immediate  
22 delivery to any duly licensed vehicle dealer having a franchise or  
23 contractual agreement for the retail sale or lease of new and unused  
24 vehicles sold or distributed by such manufacturer within sixty days  
25 after such dealer's order has been received in writing unless caused by  
26 inability to deliver because of shortage or curtailment of material,  
27 labor, transportation, or utility services, or by any labor or  
28 production difficulty, or by any cause beyond the reasonable control of  
29 the manufacturer;

30 (f) To provide under the terms of any warranty that a purchaser or  
31 lessee of any new or unused vehicle that has been sold or leased,  
32 distributed for sale or lease, or transferred into this state for  
33 resale or lease by the vehicle manufacturer may only make any warranty  
34 claim on any item included as an integral part of the vehicle against  
35 the manufacturer of that item.

36 Nothing in this section may be construed to impair the obligations  
37 of a contract or to prevent a manufacturer, distributor,

1 representative, or any other person, whether or not licensed under this  
2 chapter, from requiring performance of a written contract entered into  
3 with any licensee hereunder, nor does the requirement of such  
4 performance constitute a violation of any of the provisions of this  
5 section if any such contract or the terms thereof requiring  
6 performance, have been freely entered into and executed between the  
7 contracting parties. This paragraph and subsection (14)(b) of this  
8 section do not apply to new motor vehicle manufacturers governed by  
9 chapter 46.96 RCW.

10 (15) Unlawful transfer of an ownership interest in a motor vehicle  
11 as defined in RCW 19.116.050.

12 (16) To knowingly and intentionally engage in collusion with a  
13 registered owner of a vehicle to repossess and return or resell the  
14 vehicle to the registered owner in an attempt to avoid a suspended  
15 license impound under chapter 46.55 RCW. However, compliance with  
16 chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise  
17 disposing of the vehicle, including providing redemption rights to the  
18 debtor, is not a violation of this section.

19 **Sec. 2.** RCW 63.14.010 and 1999 c 113 s 1 are each amended to read  
20 as follows:

21 In this chapter, unless the context otherwise requires:

22 (1) "Goods" means all chattels personal when purchased primarily  
23 for personal, family, or household use and not for commercial or  
24 business use, but not including money or, except as provided in the  
25 next sentence, things in action. The term includes but is not limited  
26 to merchandise certificates or coupons, issued by a retail seller, to  
27 be used in their face amount in lieu of cash in exchange for goods or  
28 services sold by such a seller and goods which, at the time of sale or  
29 subsequently, are to be so affixed to real property as to become a part  
30 thereof, whether or not severable therefrom;

31 (2) "Lender credit card" means a card or device under a lender  
32 credit card agreement pursuant to which the issuer gives to a  
33 cardholder residing in this state the privilege of obtaining credit  
34 from the issuer or other persons in purchasing or leasing property or  
35 services, obtaining loans, or otherwise, and the issuer of which is

1 not: (a) Principally engaged in the business of selling goods; or (b)  
2 a financial institution;

3 (3) "Lender credit card agreement" means an agreement entered into  
4 or performed in this state prescribing the terms of retail installment  
5 transactions pursuant to which the issuer may, with the buyer's  
6 consent, purchase or acquire one or more retail sellers' indebtedness  
7 of the buyer under a sales slip or memorandum evidencing the purchase,  
8 lease, loan, or otherwise to be paid in accordance with the agreement.  
9 The issuer of a lender credit card agreement shall not be principally  
10 engaged in the business of selling goods or be a financial institution;

11 (4) "Financial institution" means any bank or trust company, mutual  
12 savings bank, credit union, or savings and loan association organized  
13 pursuant to the laws of any one of the United States of America or the  
14 United States of America, or the laws of a foreign country if also  
15 qualified to conduct business in any one of the United States of  
16 America or pursuant to the laws of the United States of America;

17 (5) "Services" means work, labor, or services of any kind when  
18 purchased primarily for personal, family, or household use and not for  
19 commercial or business use whether or not furnished in connection with  
20 the delivery, installation, servicing, repair, or improvement of goods  
21 and includes repairs, alterations, or improvements upon or in  
22 connection with real property, but does not include services for which  
23 the price charged is required by law to be determined or approved by or  
24 to be filed, subject to approval or disapproval, with the United States  
25 or any state, or any department, division, agency, officer, or official  
26 of either as in the case of transportation services;

27 (6) "Retail buyer" or "buyer" means a person who buys or agrees to  
28 buy goods or obtain services or agrees to have services rendered or  
29 furnished, from a retail seller;

30 (7) "Retail seller" or "seller" means a person engaged in the  
31 business of selling goods or services to retail buyers;

32 (8) "Retail installment transaction" means any transaction in which  
33 a retail buyer purchases goods or services from a retail seller  
34 pursuant to a retail installment contract, a retail charge agreement,  
35 or a lender credit card agreement, as defined in this section, which  
36 provides for a service charge, as defined in this section, and under  
37 which the buyer agrees to pay the unpaid principal balance in one or

1 more installments or which provides for no service charge and under  
2 which the buyer agrees to pay the unpaid balance in more than four  
3 installments;

4 (9) "Retail installment contract" or "contract" means a contract,  
5 other than a retail charge agreement, a lender credit card agreement,  
6 or an instrument reflecting a sale made pursuant thereto, entered into  
7 or performed in this state for a retail installment transaction. The  
8 term "retail installment contract" may include a chattel mortgage, a  
9 conditional sale contract, and a contract in the form of a bailment or  
10 a lease if the bailee or lessee contracts to pay as compensation for  
11 their use a sum substantially equivalent to or in excess of the value  
12 of the goods sold and if it is agreed that the bailee or lessee is  
13 bound to become, or for no other or a merely nominal consideration, has  
14 the option of becoming the owner of the goods upon full compliance with  
15 the provisions of the bailment or lease. The term "retail installment  
16 contract" does not include: (a) A "consumer lease," heretofore or  
17 hereafter entered into, as defined in RCW 63.10.020; (b) a lease which  
18 would constitute such "consumer lease" but for the fact that: (i) It  
19 was entered into before April 29, 1983; (ii) the lessee was not a  
20 natural person; (iii) the lease was not primarily for personal, family,  
21 or household purposes; or (iv) the total contractual obligations  
22 exceeded twenty-five thousand dollars; or (c) a lease-purchase  
23 agreement under chapter 63.19 RCW;

24 (10) "Retail charge agreement," "revolving charge agreement," or  
25 "charge agreement" means an agreement between a retail buyer and a  
26 retail seller that is entered into or performed in this state and that  
27 prescribes the terms of retail installment transactions with one or  
28 more sellers which may be made thereunder from time to time and under  
29 the terms of which a service charge, as defined in this section, is to  
30 be computed in relation to the buyer's unpaid balance from time to  
31 time;

32 (11) "Service charge" however denominated or expressed, means the  
33 amount which is paid or payable for the privilege of purchasing goods  
34 or services to be paid for by the buyer in installments over a period  
35 of time. It does not include the amount, if any, charged for insurance  
36 premiums, delinquency charges, attorneys' fees, court costs, any

1 vehicle dealer administrative fee under RCW 46.12.042, any vehicle  
2 dealer documentary service fee under RCW 46.70.180(2), or official  
3 fees;

4 (12) "Sale price" means the price for which the seller would have  
5 sold or furnished to the buyer, and the buyer would have bought or  
6 obtained from the seller, the goods or services which are the subject  
7 matter of a retail installment transaction. The sale price may include  
8 any taxes, registration and license fees, any vehicle dealer  
9 administrative fee, any vehicle dealer documentary service fee, and  
10 charges for transferring vehicle titles, delivery, installation,  
11 servicing, repairs, alterations, or improvements;

12 (13) "Official fees" means the amount of the fees prescribed by law  
13 and payable to the state, county, or other governmental agency for  
14 filing, recording, or otherwise perfecting, and releasing or  
15 satisfying, a retained title, lien, or other security interest created  
16 by a retail installment transaction;

17 (14) "Time balance" means the principal balance plus the service  
18 charge;

19 (15) "Principal balance" means the sale price of the goods or  
20 services which are the subject matter of a retail installment contract  
21 less the amount of the buyer's down payment in money or goods or both,  
22 plus the amounts, if any, included therein, if a separate identified  
23 charge is made therefor and stated in the contract, for insurance, any  
24 vehicle dealer administrative fee, any vehicle dealer documentary  
25 service fee, and official fees; and the amount actually paid or to be  
26 paid by the retail seller pursuant to an agreement with the buyer to  
27 discharge a security interest or lien on like-kind goods traded in or  
28 lease interest in the circumstance of a lease for like goods being  
29 terminated in conjunction with the sale pursuant to a retail  
30 installment contract;

31 (16) "Person" means an individual, partnership, joint venture,  
32 corporation, association, or any other group, however organized;

33 (17) "Rate" means the percentage which, when multiplied times the  
34 outstanding balance for each month or other installment period, yields  
35 the amount of the service charge for such month or period.

1       **Sec. 3.** RCW 63.14.130 and 1999 c 113 s 4 are each amended to read  
2 as follows:

3       The service charge shall be inclusive of all charges incident to  
4 investigating and making the retail installment contract or charge  
5 agreement and for the privilege of making the installment payments  
6 thereunder and no other fee, expense or charge whatsoever shall be  
7 taken, received, reserved or contracted therefor from the buyer, except  
8 for any vehicle dealer administrative fee under RCW 46.12.042 or for  
9 any vehicle dealer documentary service fee under RCW 46.70.180(2).

10       (1) The service charge, in a retail installment contract, shall not  
11 exceed the dollar amount or rate agreed to by contract and disclosed  
12 under RCW 63.14.040(1)(h).

13       (2) The service charge in a retail charge agreement, revolving  
14 charge agreement, lender credit card agreement, or charge agreement,  
15 shall not exceed the schedule or rate agreed to by contract and  
16 disclosed under RCW 63.14.120(1). If the service charge so computed is  
17 less than one dollar for any month, then one dollar may be charged.

18       NEW SECTION. **Sec. 4.** This act takes effect only when Senate Bill  
19 No. 6061 or House Bill No. 2231 takes effect. If neither of these  
20 bills takes effect by December 31, 2003, this act is null and void in  
21 its entirety."

**SHB 2215** - S COMM AMD  
By Committee on Highways & Transportation

**ADOPTED 04/16/2003**

22       On page 1, line 1 of the title, after "fees;" strike the remainder  
23 of the title and insert "amending RCW 63.14.010 and 63.14.130;  
24 reenacting and amending RCW 46.70.180; and providing contingent  
25 effect."

--- END ---